

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
March 29, 2001

In Reply Refer To:
1800B3-GDG

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In re: WSNL(AM), Flint, MI
Facility ID: 42078
File No. BP-19971126AC

Dear Mr. McCormick:

This letter concerns the uncontested February 16, 2001 (as amended March 1, 2001) request filed on behalf of Midwest Broadcasting Corp. ("Midwest") for waiver of the Commission's rules, 47 C.F.R. §73.3598, to permit tolling of the referenced permit. For the reasons detailed below, we will grant Midwest's request for waiver.

The referenced application was filed November 26, 1997 as the result of an AM Interference Reduction Agreement with Citicasters Co.'s ("Citicasters") Columbus, Ohio station WTVN(AM). The parties agreed that WSNL would reduce its nighttime power to permit WTVN to increase its nighttime power. Although the agreement required that the stations implement the agreement simultaneously, the applications were inadvertently not processed simultaneously. Midwest's uncontested application was granted March 25, 1998, requiring completion of construction by March 25, 2001; Citicasters' contested application was granted September 16, 1999, requiring completion of construction by September 16, 2002. Further, Citicasters' permit has been the subject of judicial review since December 21, 1999. Neither party, therefore, has had the opportunity to fulfill the terms of their agreement while the status of WTVN's permit remains subject to review.

Section 73.3598(b)(ii) of the Commission's rules permits tolling for judicial review purposes "when construction is delayed by any cause of action pending before any court of competent jurisdiction relating to any necessary local, state or federal requirement for the construction or operation of the station." Midwest concedes that its station is not directly subject to either administrative or judicial review, but that the pending Court proceeding involving Citicasters' Columbus, Ohio permit nonetheless directly affects it.

The Commission can waive any of its rules, upon a finding of good cause consistent with the public interest. *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied* 409 U.S. 1027 (1972). With respect to waiver of our tolling rules, the

Commission recognizes that “there may be rare and exceptional circumstances . . . which would warrant the tolling of construction time.” *Memorandum Opinion and Order* in MM Docket 98-43, 14 FCC Rcd 17525, 17541 (1999). We believe such circumstances exist in this matter.

The Commission believes that the public interest is served by encouraging interstation agreements proposing a reduction in AM interference. *In the Matter of Policies to Encourage Interference Reduction Between AM Broadcast Stations*, 5 FCC Rcd 4492, 4494 (1990). To encourage such proposals, the Commission modified its contingent applications rule, 47 C.F.R. §73.3517(c), to accept two or more AM modification applications “that are contingent upon granting of both, if granting such contingent applications will reduce interference to one or more AM stations or will otherwise increase the area of interference-free service.” The WSNL and WTVN applications were simultaneously filed but not simultaneously granted, placing the former at a distinct disadvantage while it awaits finality of the latter’s situation. We believe that the public interest benefits inherent to the Interference Reduction Agreement between the stations cannot be achieved until both stations implement the approved changes.

Accordingly, Midwest’s request for waiver of the Commission’s tolling rules, 47 C.F.R. §73.3598(b), IS GRANTED and the licensee MUST NOTIFY, pursuant to 47 C.F.R. §73.3598(c), this office in writing within thirty days of the resolution of the tolling event to enable the staff to modify the Commission’s records to reflect the appropriate period the referenced permit was encumbered. If the tolling event is not resolved within one year from the date of this letter, Midwest must submit a status report on that date and at 6-month intervals thereafter. While the related applicant, Citicasters, has not to date sought tolling treatment, we strongly urge both parties to the WSNL/WTVN Interference Reduction Agreement to coordinate their efforts regarding the construction of the approved facilities.

Sincerely,

Linda Blair
Chief, Audio Services Division
Mass Media Bureau

cc: Charles R. Naftalin, Esq.